Supreme Court, U.S.
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No. 97-1627

In The

Supreme Court of the United States

October Term, 1997

SHARLET BELTON COLLINS,

Petitioner,

vs.

CITY OF HAZLEHURST, MISSISSIPPI,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Mississippi

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Respondent disagrees with the question presented for review.

The sole question presented for review is whether the Court should exercise its discretion to grant the Petition, when the Petition has not shown that a state court has decided an important question of federal law in a way that conflicts with relevant decisions of the Court.

PARTIES TO THE PROCEEDINGS

The Petition accurately lists the parties to the proceeding.

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ORDINANCE:

Hazlehurst Ordinance No. 180, § 2, sub-section e 1, 3, 9, 10

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution; § 67-3-53(e), Miss. Code Ann. (1972); § 67-3-65 Miss. Code Ann. (1972); and City of Hazlehurst, Mississippi Ordinance No. 180, § 2, sub-section e; and § 21-13-11 Miss. Code Ann. (1972).

Fourteenth Amendment to the United States Constitution

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

§ 67-3-53(e), Miss. Code Ann. (1972)[1]

In addition to any act declared to be unlawful by this chapter, or by Sections 27-71-301 through 27-71-347 and Sections 67-3-17, 67-3-27, 67-3-29, and 67-3-57, it shall be unlawful for the holder of a permit authorizing the sale of beer or light wine at retail:

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[1] This statute was amended in 1995 by Laws, 1995, ch. 398, § 1, which became effective on March 15, 1995. However, the section of the statute involved in this case was not amended.

. . . .

(e) To permit persons of ill repute, known criminals, prostitutes or minors to frequent his licensed premises, except minors accompanied by parents or guardians, or under proper supervision.

§ 67-3-65 Miss. Code Ann. (1972)

Municipalities may enforce such proper rules and regulations for fixing zones and territories, prescribing hours of opening and of closing, and for such other measures as will promote public health, morals, and safety, as they may by ordinance provide. The board of supervisors of any county may make such rules and regulations as to territory outside of municipalities as are herein provided for municipalities. Nothing in this chapter shall prohibit the governing body of any municipality from designating what territory surrounding churches and schools in said municipalities, and the board of supervisors of any county from designating what territory surrounding churches and schools outside of any municipality, in which light wines and beer shall not be sold or consumed.

HAZLEHURST ORDINANCE NO. 180,[2] SECTION 2, SUB-SECTION E

It shall be unlawful for any holder of an on-premises permit to sell beer to permit anyone under the age of 21 years in his or her premises.

SECTION 21-13-11, MISS. CODE ANN. (1972)

Every ordinance passed by the governing body of a municipality, except as is otherwise provided by law, shall be certified by a municipal clerk, signed by the mayor or a majority of all the members of the governing body, recorded in the ordinance book, and published at least one (1) time in some newspaper published in such municipality, or, if there be no such newspaper, then in a newspaper within the county having general circulation

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[2] The ordinance is incorrectly quoted by Petitioner. Ordinance No. 180 is an amendment to prior ordinances and the prior ordinances, specifically Ordinance No. 155, provides the penalty provision as follows:

> Any violation of this order shall be a misdemeanor and any person upon the first conviction thereof shall be punished by fine of $250.00 or imprisoned for not more than thirty days or both. Any person upon a second and/or subsequent offense shall be punished by a fine of not more than $500.00 or imprisoned for not more than thirty days or both, and, in addition, their license shall be automatically suspended for a period of thirty days. In addition, the Mayor and Board of Aldermen may, in their discretion, suspend or revoke the license of any person convicted of violating the terms of this ordinance for additional periods of time if deemed appropriate in the premises.

in said municipality, or, if there be no newspaper published in or having general circulation in same, then in any newspaper published in the State of Mississippi having general circulation in said county; and all of same shall be done before such ordinance shall be effective. The publication of the ordinance may be made as provided in Section 21-17-19. No ordinance shall be in force for one (1) month after its passage; however, any ordinance for the immediate and temporary preservation of the public peace, health or safety or for other good cause, which is adopted by unanimous vote of all members of the governing body, may be made effective from and after its passage by a unanimous vote of all members of the governing body. However, in such cases, such ordinance shall contain a statement of reason why it is necessary that same become immediately effective. All such ordinances shall be published and recorded in the ordinance book in the same manner as other ordinances, but shall become effective immediately upon the adoption thereof, and prior to being so recorded and published. Nothing in this section shall apply to ordinances appropriating money for the payment of the current expenses of the municipality or the payment of sums due on any contract previously made.

STATEMENT OF THE CASE

Sharlet Collins, Petitioner, is the holder of an on-premises retail beer permit which allows the sale of beer by the can to people 21 years of age or older. She owns a restaurant and lounge in the City of Hazlehurst named Club O'Hara. Before the patrons may enter the club, they

are checked with a scanner for weapons. The City of Hazlehurst has an ordinance which prohibits individuals under 21 years of age from being inside a premises licensed to sell beer where beer is allowed to be consumed. Collins, as holder of the permit, was responsible for making sure the club was run properly, responsible for hiring the people that check I.D.'s and provide security, and for telling her employees to check a person's I.D. if there was any question about the person. [Pet. App. 3].

On October 22, 1994, a band named "Bones" was playing at the club. LaKeith Brown, who was 18 years of age at the time, entered the club at approximately 8:30 p.m. with his cousin, Antonio Jordan, who was over 21. There was a security guard checking for weapons with a scanner. He was supposed to check for the safety of customers and identification. The security guard used the scanner to check LaKeith for weapons but did not check his I.D. LaKeith paid $10.00 for entry into the club and was not questioned concerning his age. [Pet. App. 3, 4].

The security guards were instructed to check patrons' identification, unless they knew the person entering the club was over 21. The club had over 100 patrons on this particular night. Collins testified that there were signs on the walls of the lobby to inform patrons that they must be 21 years of age to enter the club and that they must show proper identification upon entering. LaKeith stated that he was not paying attention to any signs when he entered the club. [Pet. App. 4].

LaKeith entered the club and proceeded to the dance floor. He stayed on the dance floor for about 30 minutes and went to the only bathroom in the building. Although

LaKeith stated that the only place he saw people consuming beer was the bar, he had to pass through the bar area of the club to get to the bathroom. As he left the bathroom, LaKeith was pulled to the side by Charles Smith, a police officer for the City of Hazlehurst, and asked to produce his I.D. It was at this time the officer learned LaKeith was 18 years of age. [Pet. App. 4].

Officer Smith then charged Collins with violating the ordinance which makes it a misdemeanor to allow anyone under the age of 21 into a business which has an on-premises retail beer permit regardless of whether the minor is accompanied by a parent or guardian or is under proper supervision. [Pet. App. 4, 5].

Collins, the Petitioner, was found guilty by a jury and the Circuit Court of Copiah County, Mississippi, sentenced Collins to serve 30 days in the county jail, suspended on two years good behavior probation and to pay a fine in the sum of $250.00 and court costs in the amount of $81.00. [Pet. App. 2].

Collins appealed her conviction, asserting two issues to the Mississippi Supreme Court:

I. **Whether the City's ordinance conflicts with a state statute, thereby making the ordinance void.**

II. **Whether the conviction of Collins was against the overwhelming weight and sufficiency of the evidence. [Pet. App. 3].**

The Mississippi Supreme Court affirmed the Trial Court's decision. [Pet. App. 1-17]. The Petitioner filed a Petition for Rehearing on December 29, 1997 and raised

for the first time the issue of violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and an *ex post facto* violation which was denied by the Mississippi Supreme Court. [Pet. App. 18].

REASONS FOR DENYING THE PETITION FOR CERTIORARI

THE PETITIONER'S PROSECUTION AND CONVICTION UNDER THE CITY OF HAZLEHURST, MISSISSIPPI'S MUNICIPAL ORDINANCE AND THE MISSISSIPPI SUPREME COURT'S DECISION AFFIRMING THAT CONVICTION DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Petitioner states that prior to the instant case, she had no notice that Miss. Code Ann. § 67-3-65 granted municipal authorities the power to enact an ordinance which abrogated rights under Miss. Code Ann. § 67-3-53(e). This simply is not the case. The statute in question, Miss. Code Ann. § 67-3-53(e) provides, "In addition to any act declared to be unlawful by this chapter . . . " which clearly confers notice to a "person of ordinary intelligence" to look further and determine what, if any, other acts may be unlawful. The statute, Miss. Code Ann. § 67-3-65, which is included in the chapter referred to by Miss. Code Ann. § 67-3-53(e), clearly provides:

> Municipalities may enforce such proper rules and regulations for fixing zones and territories, prescribing of hours and of closing, and for such other measures as will promote the public

> health, morals and safety as they may by ordinance provide . . .

The Mississippi Supreme Court ruled, "this Court finds the City correctly adopted its ordinance under the authority of Miss. Code Ann. § 67-3-65." [Pet. App. 8]. The correct and lawful adoption of a municipal ordinance requires compliance with Miss. Code Ann. § 21-13-11 which provides in part:

> Every ordinance passed by the governing body of a municipality, except as otherwise provided by law, shall be certified by a municipal clerk, signed by the mayor or a majority of all the members of the governing body, recorded in the Ordinance Book, and **published at least one (1) time in some newspaper published in such municipality** . . .
>
> (emphasis added)

It must be presumed by the finding of the Mississippi Supreme Court that the ordinance was duly adopted and that the statutory requirements were complied with *in toto*.

In the instant case, the Petitioner, Collins, had actual knowledge that it was unlawful for individuals under 21 years of age to be in her establishment or club. [App. 2].

The argument of the Petitioner that there has been a denial of due process fails for the following reasons:

(1) Miss. Code Ann. § 67-3-53(e) gives fair warning of other acts declared to be unlawful within the Code chapter;

(2) Miss. Code Ann. § 67-3-65 clearly authorized the adoption of ordinances by the municipality and thereby

gives "fair notice" to "persons of ordinary intelligence" to inquire of the municipality as to which regulations concerning the sale of beer may be applicable;

(3) Hazlehurst Ordinance No. 180 was found to be correctly adopted by the Mississippi Supreme Court which implies notification to the public by publication; and

(4) The Petitioner had actual knowledge that it was unlawful for individuals under the age of 21 years to be on the premises and this was foreseeable.

This Court has stated, "The basic principle that a criminal statute must give fair warning of the conduct that makes it a crime has often been recognized by this Court." *Bouie v. City of Columbia*, 378 U.S. 347, 350 (1964). Petitioner, Collins, explained to the Court in her Petition,

> This Court, in *Bouie v. Columbia*, 378 U.S. 347, 351 (1964), "struck down a state criminal statute under the Due Process Clause where it is not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties" where a person of "common intelligence" has "to speculate as to the meaning of [a] penal [statute], the statute is unconstitutionally vague." Id.

There can be no question that the statutes and ordinance before the Court sufficiently inform the public, including the Petitioner, as to what conduct is objectionable and would not be subject to speculation on the part of a person "of common intelligence". Therefore, the due process argument of Petitioner is without merit. The grievance of Petitioner is nothing more than a factual dispute

that does not rise to the level of an important question of federal law warranting Certiorari.

THE PETITIONER'S PROSECUTION AND CONVICTION UNDER THE CITY OF HAZLEHURST, MISSISSIPPI'S MUNICIPAL ORDINANCE AND MISSISSIPPI SUPREME COURT'S DECISION AFFIRMING THAT CONVICTION DOES NOT CONSTITUTE AN EX POST FACTO LAW.

The adoption and enforcement of Hazlehurst Ordinance No. 180 does not constitute an *ex post facto* law. Petitioner makes no claim that the ordinance was adopted after the offense for which she was convicted occurred.

The issues framed by Petitioner failed to state any of the four basic types of retrospective change which are prohibited by the *ex post facto* clause, including:

(1) Imposing punishment for an act which was innocent when done;

(2) Aggravating the degree of a crime resulting from an act;

(3) Imposing additional punishment beyond those which were prescribed for an act when the act was committed;

(4) Altering the legal rules of evidence so as to allow conviction upon less or different proof then the law required at the time an offense was committed. *Calder v. Bull* (1798), 3 U.S. 386, 3 Dall 386, 1 L.Ed. 648, 131 L.Ed. 2d 1043 § 2 [(a)].

Further, it must be noted that Miss. Code Ann. 67-3-65 clearly grants municipalities the right to adopt rules and regulations and other measures to promote the health, morals and safety of the community by ordinance and this is not an unforeseeable judicial enlargement of a criminal statute applied retroactively that would be violative of the U.S. Const. art. I, § 10.

There is no *ex post facto* violation which this Court should consider.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

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PARTIAL TESTIMONY OF SHARLET COLLINS
(Transcript pages 69-71)

CROSS EXAMINATION BY MR. PATTEN:

Q. You don't agree that people under 21 years of age should not be permitted in your club, do you?

A. Should not be?

Q. That's right.

A. Yes, I agree.

Q. You agree with that?

A. That they shouldn't be in there?

Q. They shouldn't be in there.

A. Without proper supervision, I disagree with it, but if they are under proper supervision.

Q. So, what you say is that if they are supervised, and I take that to mean by someone 21 years of age or older, it's okay for them to be in the club?

A. On different functions such as like fashion shows or wedding receptions and stuff of that nature. It's hard to single out. You know, a parent may want them to come in there for that.

Q. Okay. What about on the night that, I believe it was Bones; is that their name –

A. Yes.

Q. – playing on October 22nd?

A. Yes.

Q. Was it alright for someone under 21 years of age to be there under supervision of a parent or a guardian or a 21-year-old cousin by the name of Antonio Jordan?

A. No.

Q. It wasn't alright. So if he got in there, that was wrong, correct?

A. (Pauses) Yes.

Q. And if he wasn't asked for his I.D. and how old he was, that was wrong?

A. I – well, if he wasn't, it was wrong, but I feel like he was.

Q. You've heard the uncontradicted testimony that he wasn't asked.

A. Uh-huh, I did.

Q. Okay. Nobody has testified otherwise, have they?

A. But if – if the person that was there to ask for I.D.s wasn't in question then he didn't do anything wrong. But if he felt like he wasn't 21 he should have asked.

Q. Okay. If he wasn't asked how old he was and he got into your club, that was wrong, correct?

A. Yes.

Q. Now, who holds the retail permit to sell beer for the Club O'Hara?

A. Myself.

Q. And who is responsible for making sure that the Club O'Hara is run properly?

A. Myself.

Q. And who is responsible for hiring the people that check the I.D.s and provide the security?

A. Myself.

Q. And who is – was responsible for telling those people that if you have a question about this person, check his I.D.?

A. Myself.

. . .